

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

FLASHPOINT TECHNOLOGY, INC.,

Plaintiff,

V.

APITEK, INC., ARGUS CAMERA CO., LLC,  
BUSHNELL INC., DXG TECHNOLOGY (U.S.A.)  
INC., DXG TECHNOLOGY CORP., GENERAL  
ELECTRIC CO., LEICA CAMERA AG, LEICA  
CAMERA INC., MINOX GMBH, MINOX USA, INC.,  
MUSTEK, INC. USA, MUSTEK, INC., OREGON  
SCIENTIFIC, INC., POLAROID CORP., RITZ  
INTERACTIVE, INC., RITZ CAMERA CENTERS,  
INC., SAKAR INTERNATIONAL, INC., D/B/A  
DIGITAL CONCEPTS, TABATA U.S.A., INC., D/B/A  
SEA & SEA, TARGET CORP., VISTAQUEST CORP.,  
VUPOINT SOLUTIONS, INC., WALGREEN CO., and  
WAL-MART STORES, INC.,

## Defendants

C.A. No. 08-139-GMS

## JURY TRIAL DEMANDED

## PLAINTIFF'S REPLY TO TABATA U.S.A., INC.'S COUNTERCLAIMS

Plaintiff FlashPoint Technology, Inc. (“FlashPoint”) hereby responds to each paragraph of Tabata U.S.A., Inc.’s (“Tabata”) Counterclaims as follows:

## THE PARTIES

1. Upon information and belief, admitted.
2. Admitted.

## JURISDICTION AND VENUE

3. Admitted that this action purports to arise under the Patent Laws of the United States, 35 U.S.C. §100 *et seq.*, and the Declaratory Judgments Act, 28 U.S.C. §§2201 and 2202, based on an actual justiciable controversy between FlashPoint and

Tabata regarding the infringement of one or more claims of the patents-in-suit, and that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331, 1338(a), 2201 and 2202, but otherwise denied.

4. Admitted.

**FIRST COUNTERCLAIM: NON-INFRINGEMENT OF THE '480 PATENT**

5. FlashPoint incorporates the replies set forth in Paragraphs 1-4 above as if fully set forth herein.

6. Denied.

7. Admitted that Tabata seeks a declaration from this Court that Tabata does not infringe any valid, asserted claim of the '480 patent, but otherwise denied.

**SECOND COUNTERCLAIM: NON-INFRINGEMENT OF THE '956 PATENT**

8. FlashPoint incorporates the replies set forth in Paragraphs 1-7 above as if fully set forth herein.

9. Denied.

10. Admitted that Tabata seeks a declaration from this Court that Tabata does not infringe any valid, asserted claim of the '956 patent, but otherwise denied.

**THIRD COUNTERCLAIM: NON-INFRINGEMENT OF THE '538 PATENT**

11. FlashPoint incorporates the replies set forth in Paragraphs 1-10 above as if fully set forth herein.

12. Although FlashPoint is still investigating this matter, FlashPoint does not presently allege that Tabata infringes, contributes to the infringement of, or actively induces others to infringe, any claim of the '538 patent.

13. FlashPoint does not presently assert that any claim of the '538 patent is infringed by Tabata.

**FOURTH COUNTERCLAIM: NON-INFRINGEMENT OF THE '190 PATENT**

14. FlashPoint incorporates the replies set forth in Paragraphs 1-13 above as if fully set forth herein.

15. Denied.

16. Admitted that Tabata seeks a declaration from this Court that Tabata does not infringe any valid, asserted claim of the '190 patent, but otherwise denied.

**FIFTH COUNTERCLAIM: NON-INFRINGEMENT OF THE '316 PATENT**

17. FlashPoint incorporates the replies set forth in Paragraphs 1-16 above as if fully set forth herein.

18. Although FlashPoint is still investigating this matter, FlashPoint does not presently allege that Tabata infringes, contributes to the infringement of, or actively induces others to infringe, any claim of the '316 patent.

19. FlashPoint does not presently assert that any claim of the '316 patent is infringed by Tabata.

**SIXTH COUNTERCLAIM: NON-INFRINGEMENT OF THE '914 PATENT**

20. FlashPoint incorporates the replies set forth in Paragraphs 1-19 above as if fully set forth herein.

21. Although FlashPoint is still investigating this matter, FlashPoint does not presently allege that Tabata infringes, contributes to the infringement of, or actively induces others to infringe, any claim of the '914 patent.

22. FlashPoint does not presently assert that any claim of the '914 patent is infringed by Tabata.

**SEVENTH COUNTERCLAIM: NON-INFRINGEMENT OF THE '575 PATENT**

23. FlashPoint incorporates the replies set forth in Paragraphs 1-22 above as if fully set forth herein.

24. Although FlashPoint is still investigating this matter, FlashPoint does not presently allege that Tabata infringes, contributes to the infringement of, or actively induces others to infringe, any claim of the '575 patent.

25. FlashPoint does not presently assert that any claim of the '575 patent is infringed by Tabata.

**DEMAND FOR JURY TRIAL**

26. No response to Paragraph 26 is required.

**PRAYER FOR RELIEF**

In addition to the relief requested in Plaintiff's Original Complaint, Plaintiff respectfully requests a judgment as follows against Tabata as follows:

- A. That Tabata takes nothing by its Counterclaims;
- B. That the Court award Plaintiff costs and attorneys' fees incurred in defending against these Counterclaims; and
- C. Any and all further relief for Plaintiff as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues.

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Dated: May 20, 2008

/s/ Evan O. Williford

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**CERTIFICATE OF SERVICE**

I, Evan O. Williford, hereby certify that on May 20, 2008, I caused to be electronically filed a true and correct copy of the foregoing document – **Plaintiff's Reply to Tabata U.S.A., Inc.'s Counterclaims** – with the Clerk of Court using CM/ECF which will send notification of such filing to the following local counsel for defendants:

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I further certify that on May 20, 2008, I caused a copy of the foregoing document to be served on the following defendants by First Class Mail:

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